

APPEALS BOARD ORDINANCE

**For The Town of
CAMBRIDGE, MAINE**

ENACTED: Date March 6, 2010

Signature: Clara Wilson
Town Clerk of Cambridge

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**APPEALS BOARD ORDINANCE
FOR THE TOWN OF CAMBRIDGE**

I. GENERAL PROVISIONS:

- A. The business of the Board shall be conducted by the provisions set forth in this Ordinance.
- B. It shall be the responsibility of the members of the Board to become familiar with all the duly enacted ordinances of the Town which they may be expected to act upon, as well as with the applicable State statutes.
- C. It shall be the responsibility of the members of the Board to become familiar with the community goals, desires, and policies as expressed in the Town of Cambridge's Comprehensive Plan, now in effect, and grant the minimum relief which will insure that the goals and policies of the plan are preserved.
- D. The Board may obtain goods and services necessary to its proper function within the limits of appropriations made for this purpose.

II. APPOINTMENTS:

- A. The Board shall consist of five (5) members appointed by the Selectmen of the Town of Cambridge for terms of three (3) years. The initial appointments shall be as follows: 2 members to serve terms to expire as of the date of the Annual Town Meeting in 2011, 2 members to serve terms to expire as of the date of the Annual Town Meeting in 2012, and 1 member to serve a term to expire as of the date of the Annual Town Meeting in 2013.
- B. Thereafter, all appointment to the Board shall be for terms of 3 years.
- C. Neither a municipal officer nor his or her spouse may be a member of the Board.
- D. Any member of the Board may be removed from the Board, for cause, by the Selectmen before the expiration of his/her term, but only after notice and an opportunity to refute specific charges

against him/her. The term "for cause" shall include failure to attend 2 consecutive Board meetings or hearings without sufficient justification, or voting when the member has a "conflict of interest".

- E. When there is a permanent vacancy of a member, the Secretary shall immediately notify the Town Clerk. The Selectmen shall, within 60 days, appoint a person to serve for the unexpired term.

III. OFFICERS AND DUTIES:

- A. The officers of the Board shall consist of a Chairperson, Vice-Chairperson, who shall be elected annually by a majority of the Board. The Board may either elect a Secretary from its members or hire a non-member to serve as Secretary.
- B. **CHAIRPERSON:** The Chairperson shall perform all duties required by law and theses by-laws and preside at all meetings of the Board. The Chairperson shall rule on issues of evidence, order, and procedure, and shall take such other actions as are necessary for the efficient and orderly conduct of a hearing, unless directed otherwise by a majority of the Board. The Chairperson shall appoint any committees found necessary to carry out the business of the Board.
- C. **VICE-CHAIRPERSON:** The Vice-Chairperson shall serve in the absence of the Chairperson and shall have all the powers of the Chairperson during the Chairperson's absence, disability or disqualification.
- D. **SECRETARY:** The Secretary, subject to the direction of the Board and the Chairperson, shall keep the minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Secretary shall also arrange proper and legal notice of a hearing, attend to correspondence of the Board, and to other duties as are normally carried out by a secretary. The Secretary shall keep a record of all resolutions, transactions, correspondence, findings and determinations of the Board, and shall prepare a complete record of each hearing, including: date, time and place of the hearing; subject of the hearing; identification of each participant; any agreements made between parties and the Board

regarding procedures; the testimony presented; findings of fact and conclusions; the decision of the Board; and the date of issuance of a decision. All records are public and may be inspected at reasonable times.

IV. CONFLICT OF INTEREST:

- A. The term “conflict of interest” shall be construed to mean direct or indirect pecuniary interest, which shall include pecuniary benefit to any member of the person’s immediate family (grandfather, father, wife, son, grandson, e.g.) or to his employer of any member of the person’s immediate family.**
- B. Any question of whether a particular issue involves a “conflict of interest” sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members. The member whose potential conflict is under consideration may not vote.**

V. JURISDICTION:

- A. The Board is authorized to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit, or other required approval, or any application therefore, including the grant, conditional grant, denial, suspension, or revocation of any such license, permit or other approval or disapproval (hereinafter a “Decision”).**
 - 1. rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;**
 - 2. rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to the Building Code Ordinance for the Town of Cambridge, Maine,**
 - 3. rendered by the General Assistance Administration pursuant to the Ordinance for General Assistance Administration or the Maine statutes relating to general assistance;**

4. rendered by the Planning Board or the Selectmen pursuant to the Subdivision Review Ordinance for the Town of Cambridge, Maine;
5. rendered by the Selectmen or the Assessors relating to the abatement of taxes;
6. rendered by the Selectmen pursuant to the Ordinance for the Regulation and Issuance of Special Amusement Permits;
7. rendered by the Selectmen or the Road Commissioner pursuant to the Road Ordinance of the Town of Cambridge;
8. rendered by the Planning Board or Code Enforcement Officer pursuant to the ordinance relating to Flood Plain Management Ordinance for the Town of Cambridge;
9. rendered by the Selectmen pursuant to the Policy on Warning Signs Requests;
10. rendered by the Selectmen pursuant to the Town Personnel Policy relating to grievances and disciplinary procedures with respect to town employees and officers.
11. The Board of Appeals jurisdiction includes appeals from enforcement decisions made by the Code Enforcement Officer or the Planning Board.

VI. POWERS AND DUTIES:

A. The Board of Appeals shall have the following powers:

1. **Administrative Review:** to hear and decide appeals where it is alleged there is an error in any administrative decision, order, requirement or determination made by the Code Enforcement Officer or Planning Board. Following such a hearing, the Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon finding that the decision is clearly contrary to the specific provision of the Ordinance.

2. **Enforcement Review:** to hear and decide appeals where it is alleged that there is an error in any enforcement decision, order, requirement, fine or penalty, or other determination made by the Code Enforcement Officer or Planning Board. Following such a hearing, the Board may grant the relief sought only if that relief is allowed by the specific provisions of the Ordinance.
3. The Board may hear and decide appeals where it is alleged that there is an error in any administrative decision, order, requirement, or determination made by the Selectmen pursuant to Section V., Subsections A-3, A-5, A-6, A-9 and A-10. Following such a hearing, the Board may reverse the decision of the Selectmen only upon finding that the decision is clearly contrary to the specific provisions of the above referenced subsections.
4. **Variances:** to authorize variances in specific cases, but only within the limitations set forth in this ordinance.
5. **Interpretation of Ordinances:** to interpret the provisions of any Town Ordinance which is called into question by the Selectmen, Code Enforcement Officer or Planning Board.
6. **Other Assignments:** to assist the Selectmen with other projects such as, but not limited to, drafting new ordinances or revising existing ordinances, only if the members have the time and willingness to assist, then they may do so.

VII. MEETINGS:

- A. The regular meeting of the Board shall be held bi-monthly or as necessary.
- B. The annual organization meeting of the Board shall be the first regular meeting after the Annual Town Meeting.
- C. Special meeting of the Board may be called by the chairperson. At least forty eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board,

Selectmen, Planning Board and Code Enforcement Officer.

- D. The chairperson shall call a special meeting within ten (10) days of the receipt of a written request from any three members of the Board which shall specify the matters to be considered at such special meeting.**
- E. The order of business at regular meeting of the Board shall be as follows: (a) roll call; (b) reading and approval of the minutes of the preceding meeting; (c) action on held cases; (d) public hearing (when scheduled); (e) other business; (f) adjournment.**
- F. All meetings of the Board shall be open to the public, except executive sessions. No votes may be taken by the Board except in public meeting. The Board shall not hold executive sessions except for consultation between the Board and its legal counsel concerning litigation or other legal matters where premature general public knowledge would clearly place the town or Board at substantial disadvantage.**

VIII. VOTING:

- A. A quorum shall consist of three (3) members of the Board. In the event that only a quorum holds a meeting, then no action shall be taken without the unanimous vote of the quorum.**
- B. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum: however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.**
- C. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the entire membership of the Board unless otherwise specified herein.**
- D. A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of any matter being considered by the Board,**

- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.**
- F. If the Board has no associate member, no regular member shall vote on the determination of any matter requiring a public hearing unless he/she has attended the public hearing thereon; however, where such a member has familiarized himself/herself with such matter by reading the record, he/she shall be qualified to vote.**

IX. VARIANCES:

The Board shall have the following powers to be exercised only upon receipt of a written appeal by an aggrieved party:

- A. Variance. Except as provided in section B, C, D, E, the Board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this section means:**
 - 1. The land in question can not yield a reasonable return unless the variance is granted;**
 - 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;**
 - 3. The granting of a variance will not alter the essential character of the locality;**
 - 4. The hardship is not the result of action taken by the applicant or a prior owner.**
- B. Disability Variance. The Board may grant a disability variance to a person who resides in or regularly uses the dwelling. The Board shall restrict this variance solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling. This variance is limited to the duration of the disability or to the time the person with the disability lives in the dwelling. For purposes of this section, a disability has the same meaning as a**

physical or mental handicap under State Statute Title 5, Section 4557. The term "structures necessary for access to or egress from the dwelling" is defined to include railings, wall or roof systems necessary for effectiveness of the structure.

C. Set-back Variance for Single Family Dwelling. The Board may grant a variance from set-back requirements only when strict application of the ordinance to the petitioner or the petitioner's property would cause undue hardship. The term "undue hardship" as used in this section means:

1. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
2. The granting of a variance will not alter the essential character of the locality;
3. The hardship is not the result of action taken by the applicant or a prior owner;
4. The granting of the variance will not substantially reduce or impair the use of abutting property;
5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

A variance under this section may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. A variance may be granted under this section to exceed 20% of a setback requirement if the petitioner has obtained written consent of all affected abutting landowners.

No variance will be granted under this section for land or buildings governed by The Shoreland Zoning Ordinance.

D. Variance from Dimensional Standards. The Board may grant a

variance from dimensional standards of a zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- 1. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;**
- 2. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;**
- 3. The practical difficulty is not the result of action taken by the petitioner or a prior owner;**
- 4. No other feasible alternative to a variance is available to the petitioner;**
- 5. The granting of a variance will not unreasonably adversely affect the natural environment;**
- 6. The property is not located in whole or in part within shoreland zones as described in the Shoreland Zoning Ordinance.**

As used in this section, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot covering, frontage and set-back requirements.

As used in this section "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

- E. Variance Recorded. If the Board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the**

date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deed within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this section. For the purpose of this section, the date of final written approval shall be the date stated of the written approval.

X. APPEAL PROCEDURE:

A. Making an Appeal:

- 1. An administrative or enforcement appeal may be taken to the Board by an aggrieved person from any administrative or enforcement decision of the Selectmen, Code Enforcement Officer or Planning Board. Such appeals shall be taken within thirty (30) days of the decision appealed from, and not otherwise, except that the Board, upon showing a good cause, may waive the thirty (30) day requirement.**
- 2. An application for a variance may be filed directly with the Board in accordance with the procedures below.**
- 3. Such an appeal shall be made by filing with the Board a written notice of appeal, specifying the grounds for such appeal. For a variance appeal the applicant shall submit:**
 - a. A sketch drawn to scale of 1" = 100' showing lot lines, location of existing building and other physical features pertinent to the variance request.**
 - b. A concise written statement stating what variance is requested.**
- 4. The Board shall notify the Selectmen, Planning Board, Code Enforcement Officer, and applicant of the appeal.**
- 5. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board shall transmit to the Board all the papers specifying the record of the decision appealed from.**

6. The Board shall hold a public hearing on the appeal within thirty-five (35) days of its receipt of an appeal application. Notice of the date, time, and place of the hearing shall be placed in newspapers of general circulation in the area at least seven (7) days prior to the hearing. Cost of the publication, with a minimum of \$50.00 paid in advance, to be borne as follows:

- a. If the appeal is made by an abutter of the project under review, or any other member of the public, cost of the publication of notice shall be borne by the person(s) making the appeal.**
- b. If the appeal is made by the applicant of the project under review, that applicant shall bear the cost of publication of the notice.**

The applicant of the project under review shall also provide written notice of the appeal to all abutting land owners.

XI. HEARING:

A. The Order of Business at a public hearing shall be as follows:

- 1. The Chairperson calls the hearing to order.**
- 2. The Chairperson determines whether there is a quorum.**
- 3. The Chairperson gives a statement of the case, reads all correspondence, and reports received.**
- 4. The Board determines whether it has jurisdiction over the appeal.**
- 5. The Board decides whether the applicant has the right to appear before the Board.**
- 6. The Board determines which individuals attending the hearing are "interested parties". "Interested Parties" are those persons who request to offer testimony and evidence and to participate in oral cross-examination. They would include abutting property owners and those who might be adversely affected by**

the Board's decision. Parties may be required by the Board to consolidate or join their appearances in part or in whole, if their interests or contentions are substantially similar and such consolidation would expedite the hearing. Municipal officers, the Planning Board and Code Enforcement Officer shall automatically be made parties to the proceeding.

Other persons attending the hearing and Federal, State, Municipal and other governmental agencies may be permitted to make oral or written questions through the Chair.

- 8. The applicant is given the opportunity to present his/her case without interruption. The person filing the appeal shall have the burden of proof.**
- 9. The Board and interested parties may ask questions of the applicant through the Chair.**
- 10. The interested parties are given the opportunity to present their case. The Board may call its own witnesses such as, but not limited to, the Code Enforcement Officer.**
- 11. The applicant may ask questions of the interested parties and Board witnesses through the Chair.**
- 12. All parties are given the opportunity to refute or rebut statements made throughout the hearing.**
- 13. The hearing is closed after all parties have been heard. If additional time is needed, the hearing may be continued to a later date. All participants should be notified of the date, time and place of the continued hearing.**
- 14. The Chairperson, after an affirmative vote of the Board may waive any of the above if good cause is shown.**

XII. DECISION:

- A. Decision by the Board shall be made within thirty (30) days from the**

date of the final hearing.

- B. The final decision on any matter before the Board shall be made by written order signed by the Chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons and basis therefore, upon all material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.**
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable State laws, local ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.**
- D. In reviewing an application on any matter, the standards in any applicable local ordinance or State statute shall take precedence over the standard of these rules whenever a conflict occurs. In all other instances, the more restrictive rules apply.**
- E. The Board may reverse the decision or failure to act, of the Selectmen, Code Enforcement Officer or Planning Board only upon a finding that the decision or failure to act, was clearly contrary to specific provisions of the ordinance or unsupported by substantial evidence in the record.**
- F. Notice of the Board's decision shall be sent by certified mail to the applicant, his representative or agent, the Planning Board, Code Enforcement Officer, and the Selectmen within seven (7) days of the decision.**
- G. Upon notification of the granting of an appeal by the Board, the Selectmen, Code Enforcement Officer or Planning Board shall promptly issue a permit, or take appropriate action, in accordance with the conditions of the decision.**
- H. Decisions of the Board shall be immediately filed in the office of the Town Clerk and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.**

- I. A copy of all variances affecting Shoreland Zoning granted by the Board shall be submitted to the Dept. of Environmental Protection within fourteen (14) days if the decision.
- J. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision: however, the Board may extend this time by an additional ninety (90) days.

XIII. RECONSIDERATION:

- A. The Board may reconsider any decision. The Board must decide to reconsider any decision, notify all interested parties and make changes in its original decision within thirty (30) days of its prior decision. The Board may reopen the appeal to additional hearings and receive additional evidence and testimony.
- B. The reasons for reconsideration shall be for, but not limited to, one of the following:
 - 1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based.
 - 2. The Board misinterpreted the Ordinance, followed improper procedures, or acted beyond its jurisdiction.

XIV. STAY OF PROCEEDINGS:

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a court of record on application, on notice to the officer from whom the appeal is taken, and on due cause shown.

XV. APPEAL TO SUPERIOR COURT:

Any aggrieved party who participated as a party during the proceedings before the Board may take an appeal to Superior Court in accordance

with State laws within forty-five (45) days from the date of any decision of the Board.

XVI. CONFLICTS WITH OTHER ORDINANCES:

Whenever this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation, or Statute, the more restrictive provision shall prevail. Excepting when there is a conflict with another ordinance in its sections or provisions for appeals procedure and or reconsideration the Board of Appeals Ordinance shall prevail.

XVII. AMENDMENTS:

This Ordinance may be amended by a simple majority vote of the legislative body of the Town of Cambridge.

XVIII. REPEAL OF THE FORMERLY ADOPTED ORDINANCE:

When the new Appeals Board Ordinance is enacted, it automatically repeals the Board of Appeals Ordinance enacted May, 11, 1990 and all amendments thereto.

XIX. SEVERABILITY:

The invalidity of any section or provision of this Ordinance shall not be held to invalidate any other section or provision of this Ordinance.

EFFECTIVE DATE:

This Ordinance becomes effective:

March 6, 2010
Month/ Day/ Year